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+1.703.836.0028 (Group 4)**DATE:** 10 September 2003

RECIPIENT INFORMATION		SENDER INFORMATION	
To:	Examiner Timothy J. Moran Art Unit 2878 U.S. Patent and Trademark Office	From:	Dave Ream
Voice Tel. No.:	1.703.305.0849	Voice Tel. No.:	1.703.299.6882
Fax Tel. No.:	1.703.872.9306	Sent By:	
Your Ref.:	Application No. 09/666,301 Confirmation No. 8409	Our Ref.:	017750-506
		Total Pages (Incl. Cover Page):	8

RE: (Mail Stop: AF) Attached is a Reply to Final Action mailed 05 September 2003.**MESSAGE:***(Mail Stop: AF)**Attached is a Reply to the Final Action mailed 05 September 2003,**Including:**Fax Cover (1 sheet)
Transmittal (2 sheets)
Reply (7 sheets)*

NOTE: The information contained in this facsimile message is attorney-client privileged and contains confidential information intended only for the use of the person(s) named above and others expressly authorized to receive it. If you are not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this message is prohibited and you are asked to notify us immediately by telephone and to return this message to us by mail without copying it.

Any questions regarding compatibility should be directed to our Office Services Department at +1.703.836.6620.

Patent
Attorney's Docket No. 017750-506

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of)	Mail Stop: AF
)	
Robert J. MARTIN)	Group Art Unit: 2878
)	
Application No.: 09/666,301)	Examiner: Timothy J. MORAN
)	
Filed: 21 September 2000)	Confirmation No.: 8409
)	
For: TWO COLOR QUANTUM WELL)	
FOCAL PLANE ARRAYS)	
)	
)	

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AMENDMENT/REPLY TRANSMITTAL LETTER

Mail Stop: AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

OFFICIAL

Sir:

Enclosed is a reply for the above-identified patent application.

- ☐ A Petition for Extension of Time is also enclosed.
- ☐ A Terminal Disclaimer and the ☐ \$55.00 (2814) ☐ \$110.00 (1814) fee due under 37 C.F.R. § 1.20(d) are also enclosed.
- ☐ Also enclosed is/are _____

(05/03)

Amendment/Reply Transmittal Letter
 Application No. 09/666.301
 Attorney's Docket No. 017750-506
 Page 2

☒ No additional claim fee is required.

☐ An additional claim fee is required, and is calculated as shown below:

AMENDED CLAIMS					
	NO. OF CLAIMS	HIGHEST NO. OF CLAIMS PREVIOUSLY PAID FOR	EXTRA CLAIMS	RATE	ADD'L FEE
Total Claims		MINUS =		× \$18.00 (1202) =	
Independent Claims		MINUS =		× \$84.00 (1201) =	
If Amendment adds multiple dependent claims, add \$280.00 (1203)					
Total Claim Amendment Fee					
If small entity status is claimed, subtract 50% of Total Claim Amendment Fee					
TOTAL ADDITIONAL CLAIM FEE DUE FOR THIS AMENDMENT					

☐ A total fee in the amount of \$ _____ is enclosed.

☐ Charge \$ _____ to Deposit Account No. 02-4800.

The Director is hereby authorized to charge any appropriate fees under 37 C.F.R. §§ 1.16, 1.17, 1.20(d) and 1.21 that may be required by this paper, and to credit any overpayment, to Deposit Account No. 02-4800. This paper is submitted in duplicate.

Respectfully submitted,

BURNS, DOANE, SWECKER & MATHIS, L.L.P.

Date: 10 September 2003

By: _____

M. David Ream
 Registration No. 35,333

P.O. Box 1404
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(05/03)

Patent
Attorney's Docket No. 017750-506

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)	
)	
)	

REPLY

Mail Stop: AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the Final Office Action mailed 05 September 2003, Applicant notes that the finality of this Action is improper. Applicant requests withdrawal of the Final Action and issuance of a new Non-Final Action, based on the arguments presented below.

Specifically, MPEP § 706.07(a) states:

Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 C.F.R. § 1.97(c) with the fee set forth in 37 C.F.R. § 1.17(p).

Attorney's Docket No. 017750-506Application No. 09/666,301

Page 2

In the Final Office Action mailed 05 September 2003, the Examiner has introduced multiple new rejections that satisfy neither of the requirements set forth in MPEP § 706.07(a) for making a new ground of rejection final.

The Amendment filed with the Appeal Brief on 13 May 2003 only canceled Claims 1-6, 8 and 11 and amended the specification to add patent numbers of related applications that were cited in the originally filed application and have since issued as U.S. patents. An Information Disclosure Statement was also filed with a corrected Appeal Brief on 03 July 2003 during the period set forth under 37 C.F.R. §1.97(d). No Information Disclosure Statement was submitted during the time period set forth under 37 C.F.R. § 1.97(c).

New Claim Rejection - 35 U.S.C. § 103(a)

In the Final Action, the Examiner rejects Claims 7 and 9-10 under 35 U.S.C. § 103(a) over U.S. Patent No. 3,624,501 to Joseph (Joseph). This rejection was not present in the Final Action mailed 14 June 2002, which Applicant subsequently appealed. This rejection was not necessitated by Applicant's claim amendments filed with the corrected Appeal Brief on 13 May 2003 because Applicant only canceled selected claims. This rejection is not based on prior art submitted in an Information Disclosure Statement submitted during the period set forth under 37 C.F.R. §1.97(c) with a fee set forth in 37 C.F.R. § 1.17(p): Joseph was of record long before the first Final Action was mailed on 14 June 2002, and was not submitted with the Information Disclosure Statement filed with the corrected Appeal Brief, which in any case was filed during the time period set forth in 37 C.F.R. § 1.97(d), not § 1.97(c).

Attorney's Docket No. 017750-506Application No. 09/666,301

Page 3

Accordingly, the rejection of Claims 7 and 9-10 under 35 U.S.C. § 103(a) over Joseph is a new rejection that was neither necessitated by Applicant's amendments to the claims, nor submitted with an Information Disclosure Statement during the time period set forth under 37 C.F.R. § 1.97(c) with a fee set forth in 37 C.F.R. § 1.17(p). Accordingly, Finality of the present Action is improper. In the event the Examiner desires to assert the rejections set forth in the present Final Action, the Examiner is requested to withdraw the present Final Action and issue a new, Non-Final Action.

New Claim Rejection - 35 U.S.C. § 112, 1st Paragraph

In the Office Action the Examiner newly rejects Claims 7 and 9-10 under 35 U.S.C. § 112, 1st Paragraph for failing to satisfy the Written Description Requirement.

This rejection was not present in the Final Action mailed 14 June 2002, which Applicant subsequently appealed. This rejection was not necessitated by Applicant's claim amendments filed with the Appeal Brief on 13 May 2003 because Applicant only canceled selected claims. This rejection is not based on prior art submitted in an Information Disclosure Statement submitted during the period set forth under 37 C.F.R. § 1.97(c) with a fee set forth in 37 C.F.R. § 1.17(p), because Applicant did not submit an Information Disclosure Statement during that time period.

Accordingly, the Examiner's rejection of Claims 7 and 9-10 under 35 U.S.C. § 112, 1st Paragraph for failing to satisfy the Written Description Requirement, is a new rejection that was neither necessitated by Applicant's amendments to the claims, nor based on prior art submitted with an Information Disclosure Statement during the time period set

Attorney's Docket No. 017750-506Application No. 09/666,301

Page 4

forth under 37 C.F.R. §1.97(c) with a fee set forth in 37 C.F.R. § 1.17(p). Accordingly, Finality of the present Action is improper.

Applicant also notes that the Examiner's remarks in the Response to Arguments section of the Final Action mailed 05 September 2003 discuss the prior art submitted with the 03 July 2003 Information Disclosure Statement. However, as mentioned above, the Information Disclosure Statement filed with the corrected Appeal Brief on 03 July 2003 was filed during the time period set forth in 37 C.F.R. § 1.97(d), not § 1.97(c), and therefore these references cannot be used to justify the Examiner in making the Office Action mailed 05 September 2003, a Final Action.

Conclusion

For at least the above reasons, Applicant respectfully submits that Finality of the Office Action mailed 05 September 2003 is improper. If the Examiner desires to assert the rejections recited in this Office Action, then the Examiner is requested to issue a new, Non-Final Action.

Attorney's Docket No. 017750-506Application No. 09/666,301

Page 5

In the event any questions arise regarding this communication or the application in general, the Examiner is invited to contact Applicant's undersigned representative at the telephone number listed below.

Respectfully submitted,

BURNS, DOANE, SWECKER & MATHIS, L.L.P.

Date: 10 September 2003By: M. David Ream

M. David Ream

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